

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

RAYTHEON COMPANY,

Plaintiff,

v.

CRAY, INC.,

Defendant.

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Case No. 2:15-cv-1554-JRG-RSP

ORDER ADOPTING MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

Before the Court is Defendant Cray Inc.’s Objection (Dkt. No. 69) to the Magistrate Judge’s Report and Recommendation Denying Cray’s Motion to Dismiss or Transfer for Improper Venue or, in the Alternative, to Dismiss or Transfer the Action Under the First-to-File Rule (Dkt. No. 65).

Cray argues that the Magistrate Judge improperly applied a *prima facie* standard of proof and erroneously credited Raytheon’s allegations in its pleadings over contrary declarations adduced by Cray, which allegedly “confirm that Cray does not have customers in this District, nor has it offered to sell or marketed any accused products to persons here.” (Dkt. No. 69 at 3.)


The Magistrate Judge did not just credit Raytheon’s pleadings over contrary evidence. Instead, the Magistrate Judge also found that Cray had failed to adduce evidence to controvert Raytheon’s allegations in its pleadings. (*See, e.g.*, Dkt. No. 65 at 5–6.) It is noteworthy that Cray’s statements on its public website confirm the correctness of the Magistrate Judge’s conclusion that Cray purposefully directed allegedly infringing sales at UT system institutions in this district. *See* Texas Advanced Computing Center (TACC) Selects Cray XC40 Supercomputer for Next Lonestar System (July 13, 2015) *available at* <http://investors.cray.com/phoenix.zhtml?c=98390&p=irol->

newsArticle&ID=2067085 (“[T]he new Cray system . . . will serve as the primary high performance computing resource in the UT Research Cyberinfrastructure (UTRC) initiative . . . the UTRC provides new capabilities that advance current and future research across all University of Texas institutions. The UTRC enables researchers in all 15 UT System institutions to collaborate with each other and compete at the forefront of science and discovery.”) (emphasis added). These statements may explain why Cray was unable to adduce competent evidence controverting Raytheon’s allegations.

The Court has reviewed the objected to portions of the Magistrate Judge’s Report and Recommendation *de novo* and finds no error. The Court adopts the conclusions of the Report and Recommendation. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). Accordingly, Defendant’s Objections are **OVERRULED**. The Magistrate Judge’s Report and Recommendation (Dkt. No. 65) is **ADOPTED** and Cray’s Motion to Dismiss or Transfer for Improper Venue or, in the Alternative, to Dismiss or Transfer the Action Under the First-to-File Rule (Dkt. No. 21) is **DENIED**.

So Ordered this

Sep 21, 2016



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE